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HUMAN RIGHTS QUESTIONS

Situation of human rights in Haiti

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by Professor Marco Tulio Bruni Celli (Venezuela), Special Rapporteur of the Commission on Human Rights on the situation of human rights in Haiti, in accordance with paragraph 6 of Commission on Human Rights resolution 1992/77 of 5 March 1992 and Economic and Social Council decision 1992/245 of 20 July 1992.

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Interim report on the situation of human rights in Haiti, prepared by the Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution 1992/77 and Economic and Social Council decision 1992/245

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I. INTRODUCTION

A. Mandate of the Special Rapporteur

1. At its forty-eighth session, the Commission on Human Rights considered the report of the Independent Expert (E/CN.4/1992/50 and Add.1) and, on 5 March 1992, adopted without a vote resolution 1992/77, entitled "Situation of human rights in Haiti". The relevant paragraphs of this resolution are reproduced below:

> "Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,
>
> Reaffirming that all Member States have a duty to promote human rights and to fulfil their obligations under the various human rights instruments,
>
> ...
>
> Taking account of the report (E/CN.4/1992/50 and Add.1) of the Independent Expert, Mr. Marco Tulio Bruni Celli, appointed by the Chairman of the Commission at its forty-seventh session,
>
> ...
>
> Deeply concerned about the serious events occurring in Haiti since 29 September 1991, which abruptly and violently interrupted the democratic process in that country, entailing the loss of human lives and the violation of human rights,
>
> Concerned also at the mass exodus of Haitian nationals fleeing the country because of the deterioration in the political and economic situation since 29 September 1991,
>
> Noting the unanimous declaration on Haiti adopted by the Permanent Council of the Organization of American States on 22 November 1991, and the subsequent dispatch by the Inter-American Commission on Human Rights of an investigating team to Haiti on 4 December 1991,
>
> Welcoming the ongoing negotiations for the restoration of the rule of law,
>
> Aware that the Commission must keep a close watch on the situation of human rights in Haiti,
>
> 1. Expresses its appreciation to the Independent Expert for his report on the situation of human rights in Haiti;

2. Strongly condemns the overthrow of the constitutionally elected President, Mr. Jean-Bertrand Aristide, and the use of violence and military coercion and the subsequent deterioration of the situation of human rights in that country;

3. Expresses its deep concern over the flagrant human rights violations committed under the illegal Government set up following the coup d'état of 29 September 1991, particularly summary executions, arbitrary arrests and detentions, torture, searches without warrant, rape, restrictions on the freedoms of movement, expression, assembly and association, and the repression of popular demonstrations calling for the return of President Aristide;

4. Expresses its appreciation to the Office of the United Nations High Commissioner for Refugees for the work it is doing in favour of the Haitian nationals fleeing the country and invites Member States to continue giving material and financial support to those efforts;

5. Draws the attention of the international community to the fate of the Haitian nationals who are fleeing the country and requests its support for the efforts undertaken to assist them;

6. Requests the Chairman of the Commission on Human Rights, following consultations with the Bureau, to appoint a special rapporteur with a mandate to prepare a report on the situation of human rights in Haiti based on all information which the special rapporteur deems relevant, especially information supplied by the Organization of American States, with a view to submitting an interim report to the General Assembly at its forty-seventh session and a report to the Commission at its forty-ninth session;

7. Requests the Secretary-General to provide the Special Rapporteur with all the assistance necessary for the performance of his mandate;

8. Decides to consider the situation of human rights in Haiti at its forty-ninth session under the agenda item entitled 'Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories'."

2. In its decision 1992/245 of 20 July 1992, the Economic and Social Council approved the requests contained in Commission on Human Rights resolution 1992/77. The recommendations and measures approved by the Commission, especially those reproduced in the preceding paragraph, guided the Special Rapporteur in his investigations and in the preparation of the report on the situation of human rights in Haiti.

B. Earlier work by independent experts

3. The situation of human rights in Haiti in recent years has been described and discussed in reports by independent experts appointed by the Chairman of the Commission. All these reports have pointed to the political, social, economic and cultural problems in Haitian society that have hindered the development of democratic institutions and, consequently, respect for human rights.

4. The latest report, submitted to the Commission at its forty-eighth session (E/CN.4/1992/50 and Add.1), gave a detailed description and analysis of the country's history and current political, social and economic characteristics. In its overview of the situation in Haiti in 1991, it distinguished between events prior to 29 September 1991, the date on which the legitimate Government of President Jean-Bertrand Aristide was overthrown, and events during the months that followed under the de facto military Government. A chapter was also devoted to a discussion of the legal background and institutional aspects of human rights in Haiti, with special emphasis on the 1987 Constitution, the legislative update programmes, the judicial system, the prison system, the armed forces, the agrarian problem, international obligations and institutional obstacles to respect for human rights.

5. The same report analysed a number of special aspects of the human rights situation in Haiti in 1991, specifically, violations of human rights in rural and urban areas, the status of the investigations requested from the Government by the Commission on Human Rights, and individual complaints received by the Expert during his visit to Haiti from 2 to 6 September 1991. A special chapter was devoted to the case of the Haitian workers deported from the Dominican Republic. The addendum to the report dealt with such matters as the initiation of political negotiations for the restoration of the legitimate Government; the extent of repression and violence; the impact of the trade embargo imposed by the Permanent Council of the Organization of American States (OAS); principal violations of human rights in Haiti after 15 November 1991 and the situation of the boat people, a topic that will be considered at length in this report.

C. Appointment of Marco Tulio Bruni Celli as Special Rapporteur

6. On 10 April 1992, after consulting with the other members of the Bureau, the Chairman of the forty-eighth session of the Commission on Human Rights, Mr. Pál Solt, appointed Professor Marco Tulio Bruni Celli of Venezuela as Special Rapporteur to carry out the mandate set out in Commission resolution 1992/77. In a letter to the Chairman of the Commission dated 4 May 1992, Mr. Bruni Celli accepted with pleasure his appointment as Special Rapporteur and pledged to fulfil the mission entrusted to him.

D. First activities of the Special Rapporteur under his mandate

7. The United Nations Centre for Human Rights informed the Special Rapporteur that his mandate included a visit to Geneva to hold consultations with the Centre and organize and prepare the work assigned to him. With the agreement of the Special Rapporteur, the dates 5-12 September 1992 were set for the consultation mission. To that end, the Centre prepared a programme of talks with representatives of States and international agencies and other individuals who, for various reasons, were in a position to provide information. In Geneva, the Special Rapporteur enjoyed the valuable cooperation of the Centre for Human Rights and met with Mr. Joseph Philippe Antonio, Chargé d'affaires of Haiti; Miss Béatrice Le Fraper of the Permanent Mission of France; Mr. John Lange of the Permanent Mission of the United States of America; and two staff members from the Office of the United Nations High Commissioner for Refugees (UNHCR). The Special Rapporteur also had the opportunity to visit the London offices of Amnesty International, whose staff had recently been in Haiti on a fact-finding mission.

8. Taking advantage of the fact that an OAS mission, headed by the Secretary-General of that organization and composed of ambassadors and representatives of international organizations, had scheduled a visit to Haiti from 18 to 21 August 1992, the Special Rapporteur visited Haiti at that time in his capacity as Chairman of the Inter-American Commission on Human Rights.

9. During his visit to Haiti, the Special Rapporteur was able to meet and exchange views with important sectors of Haitian society. He spoke with the members of the Presidential Negotiating Commission appointed by President Aristide: Father Antoine Adrien, Mr. Jean J. Molière, Mr. Michael Gaillard, Mr. Fred Joseph, Mr. Pierre Michel Sajous, Mr. Evans Paul, Mr. Michel Lomini, Mr. Jean-Baptiste Chavannes, Mrs. Georgette Omero and Senator Wesner Emmanuel. He also met with representatives of human rights groups, including Mrs. Suzy Castor of the legal assistance programme; Father Hugo Triest of the Commission de réflexion et d'assistance légale des religieux; Mr. Paul Dejean of the Centre Karl Leveque; Mrs. Béatrice Pouligny of the Programme pour une assistance de justice; Mr. Joseph Jasmin of the Groupe d'assistance juridique; and the Reverend Freud Jean, Mr. Jean-Baptiste Chenet, Mr. Joseph Policarpe and Mr. Necker Dessables of the Commission de justice et paix.

10. The Special Rapporteur was also able to meet and exchange views with leading members of the Haitian Parliament, both senators and deputies, of various political affiliations. He spoke with Senator Jacques Rony Mondestin of the Mouvement pour la reconstruction nationale (MRN), Senator Julio Larosilière of the Alliance nationale pour la démocratie et le progrès (ANDP), Senator Wesner Emmanuel of the Front national pour le changement et la démocratie (FNCD), Senator Robert Opont of the Parti démocrate chrétien haïtien (PDCH), and Senator Thomas Eddy Dupiton (ANDP).

In addition, he met with Deputy Duly Brutus (Socialist), Deputy Déus Jean François (Corps de démocrates nationalistes), Deputy Bouzi Jean Lionel (Groupe parlementaire pour le maintien de la démocratie), Deputy Frédéric Cheron (Libéraux progressistes) and Deputies Rondal Pierre Cannel and Jean-Louis Fignolé (FNCD). He met also with the members of the Episcopal Conference - Bishop Léonard Petion Larouche, Bishop François Gayot, Bishop Joseph Lafontant, Bishop Alix Verrier and Bishop Emmanuel Constant - and with the following members of the Protestant Federation: Mr. Eveque Dautruche, Mr. Edouard Poultre, Mr. Rony Desroches and Pastor Sem Marseille.

11. Lastly, the Special Rapporteur heard the views of representatives of the urban and rural labour organizations regarding the Haitian crisis in general and the human rights situation in particular. He spoke with Mr. Joseph Manucy Pierre, Mr. Louis Fignolé Saint-Cyr and Mr. Joseph Charles Baudoin of the Centrale autonome de travailleurs haïtiens (CATH); Mr. Gesner Jean-Philippe and Mr. Patrick Numa of the Organisation générale indépendante des travailleurs et travailleuses d'Haïti (OGITH); and Mr. Wilnet Content and Mr. Jean Michard of the Groupement paysan haïtien in Jacmel and Les Cayes.

12. The Special Rapporteur received a wealth of reliable information on the human rights situation in Haiti during the period covered by this report from the Inter-American Commission on Human Rights, non-governmental organizations and many other sources. This cooperation has been most useful in the preparation of the present report.

II. PRINCIPAL VIOLATIONS OF HUMAN RIGHTS IN HAITI DURING 1992

A. Repression and violence

13. During the period since February 1992, repression and violence in Haiti have prevailed. Harassment, intimidation, attacks, arbitrary arrests, summary executions and tortu. by members of the military and civilians working with them have continued since September 1991, increasing in mid-May 1992 in response to popular protests. Victims have reportedly included members and leaders of popular and human rights organizations, human rights lawyers, peasants, trade unionists, students, journalists, members of the Catholic Church and anyone suspected of supporting the return of deposed President Aristide. The situation has been exacerbated by the reinstatement, especially in the countryside, of the so-called "section chiefs", many of whom had been dismissed under the Government of President Aristide. Section chiefs are said to act with the protection and on the instructions of the military, carrying out abuses with total impunity. According to information received by the Special Rapporteur, the security forces have engaged in human rights violations against the civilian population in a policy of so-called preventive repression, directed not so much at individuals as at entire sectors of society. So widespread is the fear of persecution in Haiti that many Haitians

have gone into hiding. According to reports received by the Special Rapporteur, it is believed that at least 300,000 Haitians have left their homes since September 1991.

14. Repression in the rural areas is particularly intense, and even possessing or circulating pictures of President Aristide can be a cause for arrest. According to reliable sources, the military has brutally punished entire communities where such pictures or a text calling for the return of President Aristide have appeared. For example, it was reported that on 2 May 1992 the section chief in the commune of Mirebalais, accompanied by some 30 armed soldiers in uniform, terrorized the community for four hours, arresting and beating residents, shooting into their homes and killing their animals, targeting in particular people who had supported Aristide. The soldiers reportedly told the peasants that they had been arrested because members of the community were distributing "tracts" which called for the return of President Aristide and his reinstatement in office. In fact, it is said that the "tract" consisted of one sheet, a photo of President Aristide and some text. Most of the prisoners are reported to have escaped or been permitted to flee and many of those who were not arrested fled the region out of fear; it is said that many are afraid to return to the community, believing that the soldiers will come back for them. The Special Rapporteur received reports on a number of other similar incidents.

15. Foreign workers, such as those with non-governmental organizations, are said to have been subjected to intimidation and threats and as a result to have been obliged to stop their activities, and in some cases to have fled their homes in fear for their safety. Priests and journalists are also reported to have been subjected to death threats and harassment.

16. An increasingly common form of repression has been the extortion of money from civilians by members of the security forces, particularly in the countryside, to avoid arrest or ill-treatment, to improve their prison conditions or to obtain their release from detention. Such extortion has frequently forced victims to sell all their possessions, leaving them totally impoverished. Reports have also concerned the payment of "protection money" to militia groups in the Central Plateau, with the alleged conspiracy of the local military.

17. According to reliable information received by the Special Rapporteur, the civilian authorities are either unwilling or powerless to stop these abuses, while the military, the sole authority in many parts of the country, is said to be leading the repression. It is reported that in only one case of human rights violations have those responsible been arrested, despite the fact that in many cases the victim or witnesses have been able to identify the perpetrators. Widespread corruption within the judicial system makes it impossible for the population to seek reparation before the courts. The ordinary citizen is left with no recourse but simple denunciation to local or international human rights organizations and no other protection than hiding or paying ransom money.

B. Violation of the right to life, liberty and the security of person

18. According to information received by the Special Rapporteur, during the period since February 1992 summary executions have continued to occur in Haiti, rising sharply in mid-May 1992 following popular protests, which brought increased repression, particularly of students and residents of poor districts. Throughout the spring and summer of 1992, a number of students are reported to have been arrested and several of them shot during demonstrations in schools and colleges in Port-au-Prince; journalists attempting to report these incidents are said to have been intimidated, arrested or beaten. The Special Rapporteur has also received information that during the last two weeks of May and in early June 1992, uniformed military and police forces together with heavily armed men in civilian clothes made daily incursions into popular neighbourhoods such as Delmas, Carrefour, Cité Soleil and Waney, intimidating residents, sometimes entering their homes and stealing their possessions or shooting straight into their houses. On 27 May 1992 in Delmas, Rodolphe Lominy was reportedly killed in his home by a group of uniformed soldiers. He is said to have been talking with two women when the military group arrived and shot at them, killing Lominy and wounding the two women. According to some sources, 24 people are believed to have been summarily executed in Haiti during the month of May and dozens of bodies are said to have been found throughout the country, particularly in the poor sections. On 26 May 1992, Georges Izméry, brother of a well-known Aristide supporter, is said to have been shot in the back in front of hundreds of witnesses, less than 200 feet from a major police station in Port-au-Prince.

19. On 19 August 1992, the bodies of three young men who had reportedly been putting up posters of President Aristide in preparation for the forthcoming visit of the OAS mission are said to have been found in the Port-au-Prince morgue. The men were allegedly arrested on 18 August 1992 by members of the Haitian security forces; one of them is said to have been a co-founder of a new political party called "Open the Gates", whose purpose is reportedly to work for the return of President Aristide. On 3 September 1992, Marcel Fleurcil, reportedly a peasant organizer from the town of Sarazin in the Central Plateau region, is said to have been found dead, his body riddled with bullets, near the offices of the national phone company in Port-au-Prince.

20. The Special Rapporteur has received information on a number of other cases of the violation of the right to life. According to reliable reports, the number of those killed since the September 1991 coup by the Haitian armed forces, including the army, police and their civilian supporters, is believed to be at least 1,000 and is probably significantly higher. One source has documented 1,021 cases of extrajudicial executions from October 1991 to August 1992 and estimates that the number of cases could be as high as 3,000.

21. These acts of violence committed by the armed forces, the police and their civilian accomplices constitute a violation of article 3 of the Universal Declaration of Human Rights; article 4, paragraph 1, of the International Covenant on Civil and Political Rights; article 4 of the

American Convention on Human Rights; and article 19 of the Haitian Constitution.

C. Violation of the right to protection against arbitrary arrest and detention

22. According to information made available to the Special Rapporteur, wide-scale arbitrary or illegal arrests, reportedly almost always accompanied by torture or other ill-treatment, have continued to be carried out in Haiti, in particular following the protests in May 1992. Victims are said to include anyone suspected of supporting President Aristide, those who defend persons critical of the present authorities, students, journalists, human rights advocates, priests, nuns, rural and urban community leaders and anyone else involved in opposition activities. The majority of arrests are reported to be made without a warrant and outside the hours prescribed by the Constitution (6 p.m. to 6 a.m.) for arrests of people not caught in flagrante delicto. Although the Constitution requires that anyone arrested be brought before a judge within 48 hours, according to information received by the Special Rapporteur, detainees are regularly held for days, weeks or, in some cases, months without charge and without having been brought before the judicial authorities. In some cases, those arrested are reported to disappear. Priests and nuns working in the countryside and with local grass-roots organizations in the cities are said to have been singled out for arrest, beaten and forced to abandon their work. In this connection it is reported that, on 1 June 1992, army officers arrested Father Denis Verdier, director of the regional office of Caritas at Les Cayes, and several other priests who worked in a development project run by Caritas there. Father Verdier is said to have been beaten during the arrest and held for one week without ever having been charged or having had access to a lawyer. Reportedly, he had collected information about human rights abuses and had received death threats.

23. On 30 May 1992, Rémy Amazan, a school headmaster, and Frantz Guillit, the assistant to the mayor of Les Cayes during the Aristide administration, are said to have been arrested at Les Cayes, taken to detention centres in Port-au-Prince on 31 May and then released several days later. Elvéus Elissaint and Dorzius Bennissé, both lay religious workers, and Piersaint Piersius, a Protestant leader, were reportedly arrested without a warrant on 17 March 1992 and beaten severely; the section chief who arrested them is alleged to have broken his rifle on the back of Elvéus Elissaint. On 28 April 1992, Moléon Lebrun, leader of the Association de jeunes paysans de Bois de Lance (Young Peasants Association), was allegedly arrested without a warrant and beaten, following a demonstration at Bois de Lance. Five others said to have been arrested with him were reportedly released after paying $600 each. Moléon Lebrun, who is said to have been asked to pay $800 to obtain his release, reportedly remained in detention and was transferred to Cap Haïtien prison, allegedly in poor health because of the ill-treatment he had received; he is said to have been denied access to a doctor or lawyer. The Special Rapporteur has received extensive information on a number of other cases, including more than 1,432 cases of illegal arrest said to have taken place between October 1991 and April 1992.

24. These arbitrary detentions constitute a violation of article 9 of the Universal Declaration of Human Rights; article 9 of the International Covenant on Civil and Political Rights; article 17 of the American Convention on Human Rights; and article 24 of the Haitian Constitution, which establishes that the State guarantees the freedom of the individual.

D. Violation of the right to protection against torture and cruel, inhuman or degrading treatment or punishment

25. Torture and ill-treatment by the military, section chiefs and the civilians working with them is widespread in Haiti. Detainees are said to be routinely beaten upon arrest and beatings are reportedly a daily occurrence in detention centres. Beatings are also said to take place when the security forces intervene during demonstrations or undertake incursions into poor neighbourhoods. Beatings on both sides of the head simultaneously and severe beatings on the back and buttocks are said to be common methods of ill-treatment. Those known or suspected of being supporters of President Aristide are at particular risk. On 21 March 1992, a group of soldiers are said to have grabbed a young teacher and student friend as they were on their way to school, beating them with sticks and forcing them to clean outside walls where pro-Aristide graffiti had been written. A number of others in the area were reportedly arrested and ill-treated. On 12 August 1992, Michel Guillaume is said to have been severely beaten in his home at Jacmel by soldiers in uniform, for having a picture of President Aristide in his possession. According to information received by the Special Rapporteur, on 24 May 1992 Wiléna Dorléns, a teacher from Petit-Goâve, was arrested after a photograph of President Aristide and the Haitian flag were found in his possession. He is said to have been beaten around the head, stomach, waist and ribs at the time of his arrest and then handcuffed and taken to the police station in the fourth precinct of Port-au-Prince (known as the Cafétéria) where he was reportedly beaten more severely with the butt of a rifle on his head and wrists. On 25 May 1992, he is said to have been taken to an office and again beaten, including with a whip, and his hand forced to the ground and crushed under the boot of one of the soldiers. On 26 May 1992, he was reportedly taken to the National Penitentiary and again beaten with whips and rifle butts. He is said to have been released on 5 June 1992 after his family paid $450 to a police official from the Cafétéria police station.

26. Many of those subjected to torture are said to have been denied medical treatment and some persons are alleged to have died as a result of the ill-treatment inflicted upon them. One such case brought to the attention of the Special Rapporteur is that of Woodly Gérard Jacones who reportedly died in March 1992 as result of ill-treatment in the military barracks of Arcahaie. In many of the 1,432 cases of arbitrary arrest referred to above, the persons concerned are said to have been subjected to ill-treatment or torture. The Special Rapporteur received detailed information on a number of other cases of alleged torture.

27. These acts of torture and physical punishment constitute a violation of article 5 of the Universal Declaration of Human Rights; article 7 and article 10, paragraph 1, of the International Covenant on Civil and Political Rights; article 5 of the American Convention on Human Rights; and article 25 of the Haitian Constitution.

E. Violation of the right to freedom of opinion and expression

28. The right to freedom of opinion and expression has been severely curtailed in Haiti since September 1991. Print and broadcast journalists, as well as members and leaders of popular movements, are reported to have been subjected to threats and intimidation and in some cases given orders prohibiting them from expressing themselves freely. According to one source, there is currently the most severe repression of free expression in Haiti since the Duvalier era. At all levels of society, communication of information and the expression of opinions have become potentially life-threatening activities, endangering both the speaker and any listeners. According to reliable information, between September 1991 and September 1992, four journalists are said to have been killed, one disappeared and presumed dead and at least 30 journalists arrested. Nine radio stations are reported to have been attacked and vandalized and six are said to remain closed. Some two dozen journalists are said to have been forced to flee the country and many more to have gone into hiding.

29. One case brought to the attention of the Special Rapporteur is that of Guy Delva, the Voice of America correspondent at Port-au-Prince who is said to have been subjected to death threats by members of the security forces and beaten by the Port-au-Prince police in late May 1992, while covering a student demonstration. It is believed that he was subjected to harassment because of reports he is said to have filed abroad on the lack of press freedom and on human rights violations in Haiti. As a result of these threats, Guy Delva is said to have fled his home in February 1992, in fear for his safety. The arbitrary arrest of persons simply for possessing photographs of President Aristide (see above) is indicative of the lengths to which the security forces will go to stifle an individual's right to freedom of opinion and expression. The Special Rapporteur has also received information that many radio stations have stopped broadcasting or will not broadcast any news in fear for their security, and a number of stations have reportedly been closed by the military.

30. According to information received by the Special Rapporteur, on 12 April 1992 a journalist for Radio Tropique, Scny Estéus, was arrested and subjected to ill-treatment for distributing "anti-government tracts" in Port-au-Prince. He is said to have been held for six hours, never charged with a crime and upon his release to have required hospitalization. He is now reportedly in hiding. It is said that the attack on Sony Estéus was aimed at intimidating Radio Tropique's news coverage, and that subsequently the radio's local news broadcasts were suspended.

31. In August 1992, Radio Lumière reportedly stopped broadcasting after the station's former director, Robinson Joseph, was murdered on 3 August 1992 at a military checkpoint.

32. This practice is contrary to international norms and constitutes a violation of article 19 of the Universal Declaration of Human Rights; article 19 of the International Covenant on Civil and Political Rights; article 14 of the American Convention on Human Rights; and article 28 of the Haitian Constitution.

F. Violation of the right to freedom of assembly and association

33. According to information received by the Special Rapporteur, the Haitian military authorities have continued to interrupt peaceful meetings and prohibit groups from holding any meetings at all, particularly in the countryside. The church has allegedly been subjected to particular repression. Church groups are said to have been allowed occasionally to hold meetings in preparation for the following day's worship service, but on 6 June 1992 the parish priest at Verrettes, Father Gilles Danroc, is said to have been arrested, together with 14 Haitian students, including a pregnant 17-year-old, as he gave a catechism class in preparation for Pentecost, which was the following day. Father Danroc and the students are said to have been detained for one to one and a half days without ever having been brought before a judge or charged with a crime. A number of them, including, reportedly, the pregnant girl, are said to have been beaten by the soldiers. The arrests allegedly took place without a warrant and despite the fact that Father Danroc is said to have informed the authorities the previous day that he would be holding the catechism class.

34. The military is also said to have systematically intervened against small-scale self-help organizations promoting agricultural projects, literacy or neighbourhood improvements. Lay and religious workers, students, members and leaders of grass-roots organizations, foreign workers and anyone suspected of involvement with pro-Aristide groups are all said to have been subjected to repression and many of them have reportedly been forced into hiding or have fled the country in fear for their safety. One foreign aid worker is alleged to have been arrested just for holding a staff meeting and others for meeting with members of agricultural cooperatives.

35. According to reports received by the Special Rapporteur, the military authorities have also intervened against students holding rallies, arbitrarily arresting them. Thus was reportedly the case in March 1992 when more than 40 high school students are said to have been arrested at Gonaïves.

36. The Government of Haiti is thus systematically violating article 20 of the Universal Declaration of Human Rights; article 21 of the International Covenant on Civil and Political Rights; articles 15 and 16 of the American Convention on Human Rights; and article 3 of the Haitian Constitution.

III. SITUATION OF THE BOAT PEOPLE

37. After the coup d'état of 29 September 1991, thousands of Haitians began to set sail in small unseaworthy boats bound for the United States of America. The first boat taking Haitians to the United States was intercepted on 28 October 1991. As at 8 September 1992, 38,513 Haitians had been interdicted, according to official United States Government figures. According to reports received by the Special Rapporteur, this is almost double the number of Haitians who had been intercepted by the United States authorities during the 10-year period from September 1981 to September 1991, when 20,000 Haitians are said to have been intercepted. It is also a fact that many of the boats were shipwrecked and the people on them drowned.

38. From early December 1991 until late May 1992, the United States authorities reportedly took the boat people to the naval base at Guantánamo Bay in the south of Cuba, where they were interviewed by officials of the United States Immigration and Naturalization Service, in order to determine whether they had a plausible claim for asylum. According to information made available to the Special Rapporteur, by 8 September 1992 approximately 31 per cent of the Haitian asylum-seekers who had been screened were brought to the United States to pursue further their claims of asylum, except those who were found to be HIV positive, who will reportedly pursue their claims from Guantánamo.

39. The question whether or not refugee status is granted has caused a problem. From the beginning, the United States administration announced that the reasons why the majority of the boat people were fleeing Haiti were essentially economic and not political and therefore not all of them could be granted refugee status. Another reason given was that it would be much less risky for them to go to the Dominican Republic by land, rather than by sea, in unseaworthy vessels, to the United States. Around the middle of November 1991, Belize, Honduras, Jamaica, Trinidad and Tobago and Venezuela agreed to take in small groups of Haitian refugees. However, according to information received by the Special Rapporteur, most of the refugees who went to those countries have been voluntarily repatriated to Haiti. In the face of the rapid increase in the number of boat people last autumn, the Government of the United States took the decision to step up its vigilance, and on 18 and 19 November 1991 returned over 500 asylum-seekers to Haiti. This action resulted in numerous applications to the United States federal courts in Florida by the legal branches of non-governmental organizations acting on behalf of the boat people. In their applications they argued that these people might be exposed to physical danger if they were returned to Haiti. The judge of the District Court issued an order in this case to suspend the forcible repatriations. On 31 January 1992, at the request of the Attorney-General, the United States Supreme Court quashed the order issued by the District Court. As a result, on 4 February 1992, repatriation of the boat people to Haiti began. In May 1992, there was another massive outflow of Haitian boat people bound for the United States, and 13,000 Haitian asylum-seekers were reportedly picked up on the high seas by the United States authorities during that month.

40. Following this major upsurge in Haitian boat people attempting to reach the United States, on 24 May 1992 President George Bush issued an Executive Order authorizing the United States Coast Guard to begin returning directly to Haiti all Haitian migrants picked up at sea. According to authoritative sources, the legal reasoning on which the Order is based is that the international legal obligations of the United States under article 33 of the 1951 Convention relating to the Status of Refugees, including the principle of non-refoulement, do not extend to persons located outside the territory of the United States. The Executive Order is also said to have been issued in order to safeguard human lives and prevent Haitians from undertaking the voyage to the United States in unseaworthy boats.

41. The Executive Order has been criticized by the United Nations High Commissioner for Refugees and a number of non-governmental organizations. They maintain that the non-refoulement principle contained in article 33, paragraph 1, of the 1951 Convention applies within as well as outside the territory of States, wherever Governments act, and amounts to a prohibition to return a refugee "in any manner whatsoever" to the frontiers of territories where he has reason to fear persecution. Thus, it would apply to any action, whether rejection at the frontier or elsewhere, which would result in such a return. According to United States Government figures, as at 8 September 1992, 26,892 Haitians had been returned to Haiti. The issue of repatriation is now before the United States courts.

42. On 29 July 1992, the Second Circuit Court of Appeals overturned the District Court's decision concerning the direct repatriation policy for interdicted Haitians by ruling that the Immigration and Nationality Act prohibits the repatriation of any person interdicted on the high seas to a place where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group, or political opinion. The District Court for the Eastern District of New York issued an injunction barring the repatriation of any interdicted Haitian who meets those criteria. In response, the United States Government appealed to both the Second Circuit Court of Appeals and the Supreme Court for a stay of order. On 30 July 1992, the Court of Appeals issued a 48-hour stay of the injunction to give the Supreme Court time to consider the stay application. On 1 August 1992, the Supreme Court stayed the injunction, thereby allowing the Government to continue its repatriation policy. The Supreme Court is expected to decide this autumn whether or not to hear the case. If the Court decides to take the case, the stay will remain in effect until the merits of the case are resolved. If it decides not to take the case, the stay will terminate immediately. In the meantime, the United States Government will continue to return any Haitians picked up at sea directly to Haiti. They will not be screened or taken to Guantánamo or the United States.

43. Concern has been expressed that the asylum-seekers do not have a chance to present their claims and have their cases heard. According to information made available to the Special Rapporteur, in response to this situation, in February 1992, the United States Government began processing refugee applications from its Embassy in Port-au-Prince. According to official United

States Government reports, as at 3 September 1992, the number of total applicants in the in-country refugee processing programme was 15,055. It has been argued by some organizations that, given the climate of terror which currently prevails in Haiti, those persons most at risk would not expose themselves by telephoning or going to the United States Consulate, and given the high level of illiteracy in Haiti, writing to the consular authorities is not a viable solution for most peasants.

44. The Special Rapporteur has received information that the United States authorities have undertaken a monitoring programme of the Haitian repatriates, reportedly expanding the programme in May 1992, following the Executive Order, to include also those individuals returned directly to Haiti after interdiction at sea. According to United States Government reports, as at 31 July 1992, the monitoring programme had interviewed a total of 2,539 returnees without encountering sustainable, credible claims of reprisal or mistreatment by authorities after their return to Haiti related directly or indirectly to either their departure or their voluntary return.

45. In information received by the Special Rapporteur from non-governmental organizations, the difficulty in verifying the fate of the returned asylum-seekers has been stressed. In view of the overall climate of repression and fear in Haiti, many of the returnees have reportedly either not returned to their previous homes or have gone into hiding. According to reports received by the Special Rapporteur, there have been allegations of human rights violations against returned asylum-seekers.

46. The Special Rapporteur has also received information that five Haitians voluntarily repatriated from Cuba and eight of a group of Haitians returned by the United States Coast Guard to Port-au-Prince on 23 July 1992 were detained by the authorities, accused of having organized illegal departures. Reportedly, beginning in May 1992, the organizers ran a clandestine network throughout the coastal cities, in particular Jérémie, Les Cayes, Léogâne, Cabaret, Gonaïves and Port-de-Paix, promising prospective passengers a visa to enter the United States and a trip on a large ship which was waiting on the high seas. Instead, the passengers are said to have been taken directly to Cuba and the organizers/captains returned to Haiti. Reportedly, these 13 persons have admitted their involvement, which seems to have been solely for financial gain, and they will be tried.

47. According to reports received by the Special Rapporteur, on 19 July 1992 the Haitian police is said to have caused the death of some 35 boat people by firing on a departing refugee sailboat which reportedly had two army deserters aboard. The Government is said to have claimed that the victims died by drowning when their overcrowded boat capsized; according to witnesses, however, some of the recovered bodies reportedly had bullet wounds. Official estimates of the total dead and missing are said to be between 50 and 90 persons.

48. In the opinion of the Special Rapporteur, the problem of the boat people should be viewed within the general context of the political, economic and human rights situation in Haiti. Although it can indeed be very difficult to make a precise distinction between an economic and a political refugee, certain aspects of the Haitian situation call for a closer look at the matter. First, it will be recalled that, during the 1990 election campaign, pro-Aristide grass-roots organizations were formed in urban neighbourhoods and rural areas. These organizations openly championed Aristide not only at the polls but also through demonstrations and public meetings and, in particular, through their active support of the President during Roger Lafontant's failed coup attempt in January 1991 and later during his term of office, until September 1991. The military viewed these grass-roots organizations, founded by the leaders of the Lavalas movement and composed of Aristide supporters, as the main obstacle to the consolidation of its power and thus as its main enemy. These organizations and, naturally, their actual members and potential supporters have been subjected to indiscriminate repression. This is why, in the weeks following the coup d'état, the numerous instances of death, injury, ill-treatment and persecution occurred primarily among the anonymous residents of the poor districts of Port-au-Prince and other towns, before spreading throughout the country as many fled to rural areas, which, as noted earlier, experienced a massive resurgence in human rights violations perpetrated by the reinstated section chiefs and their agents. Thus the persecution has not focused solely on specific individuals (although there have also been many cases of violations committed against specific individuals belonging to specific social sectors, in particular leaders of the Lavalas organization, priests of the "popular church", trade union and labour leaders, teachers and educators in general). Instead, it has targeted all potential Aristide supporters, against whom the armed forces have practised continuous preventive repression, in other words, repression designed not to punish them for what they have done or may be doing but rather to prevent their involvement in demonstrations or movements. The residents of poor urban districts and the peasants, who together constitute the vast majority of the population, live not only in dire poverty but also in constant fear of arrest, torture or murder. This situation explains at least in part the massive emigration under unsafe, uncertain conditions that the boat people risk in their dangerous attempts to flee the country.

49. This massive persecution and indiscriminate harassment of the urban and rural poor (because they are potential Aristide supporters) is compounded by the continual extortion to which they are liable. The situation has reached the point where these people must pay the security forces in order to avoid persecution or ill-treatment or, in the case of arbitrary detentions, to make their imprisonment more bearable or simply to obtain their release. This doubly penalizes the country's poor, who not only see their dignity, physical integrity and liberty impugned but in the end are also forced to sell everything they own, which leaves them totally indigent.

IV. INSTITUTIONAL OBSTACLES TO RESPECT FOR HUMAN RIGHTS IN HAITI

A. Automatic abrogation of the 1987 Constitution

50. When the rule of law ceased to exist with the overthrow of President Aristide, the provisions of the 1987 Constitution automatically became null and void. It will be recalled that the 1987 Constitution abolished the death penalty and guaranteed the freedom of the individual. Thus, in theory at least, while it was in force no one could be arrested, tried or imprisoned except in the circumstances and according to the procedures laid down by law, nor be held for more than 48 hours without being brought before a court, which was required to rule on the legality of the arrest and rescind or confirm it by legal decision, stating the reason; torture and all other forms of coercion were prohibited; freedom of expression was guaranteed, and so forth. It also guaranteed the safeguards of citizenship, in the sense that no Haitian could be expelled from the country, nor could anyone be deprived of his legal capacity or citizenship. The Constitution stated that, once ratified, international treaties were automatically part of domestic law and took precedence over other law, thereby giving special weight to the International Covenant on Civil and Political Rights and the American Convention on Human Rights, both of which have been ratified by Haiti.

51. One very important provision of the 1987 Constitution, the establishment of the post of Protector of the Citizens, likewise became null and void. For the same reason, there has been no attempt to implement the provision of the Constitution that imposed separation of the army and the police and placed the police under the administration of the Ministry of Justice.

B. Abandonment of the legislative update programme

52. As a consequence of the coup d'état of 29 September 1991, the legislative reform programme begun under President Aristide has been abandoned. It will be recalled that a Legislative Commission of Experts had been formed to study, review, harmonize and propose new legislation building on the provisions of the Constitution. As indicated in the 1991 report, Haitian criminal law is inconsistent and, consequently, in need of a thorough revision as regards the characterization of crimes, the classification of penalties and misdemeanors (infractions), the introduction of new offences and penalties and the abolition of others that are no longer appropriate. Also abandoned in 1992 were the plans drawn up under the Aristide Government for the separation of the police and the armed forces, the elimination of section chiefs and the regulation of ownership, particularly land ownership, which is a key element for social peace in Haiti. The bill to transfer the administration and management of the prisons from the armed forces to the Ministry of Justice was also withdrawn.

C. Total subordination of the judiciary

53. Today more than ever, the judiciary is totally subordinate to the armed forces and fraught with corruption. There are no legal safeguards, and judges are appointed at will. People are arrested arbitrarily and sentenced without due process. There is no faith in lawyers, courts or proceedings. Interference by the executive in judicial matters and corruption make justice a sham; hence the practice of taking justice into one's own hands and the resulting climate of insecurity and violence. Whether as a result of incompetence or fear, civil justice is virtually non-existent. Those who wield the actual power - the armed forces, the police, the section chiefs and the "Tontons Macoutes" - render the judiciary powerless.

D. The prison system

54. The situation in the prisons has not changed from that described in the report submitted by the Independent Expert to the Commission on Human Rights at its forty-eighth session: the armed forces control and administer the prisons and keep order within them. Neither the judges nor the nominal authorities of the Ministry of Justice can participate or exert any influence since they are unable to give orders to the armed forces. The armed forces establish the system of visits, treatment, food, punishment and so forth. The scarce resources available for feeding prisoners are substantially reduced by the corruption of the prison administrators. The prisons are physically in ruins; men and women, children and adults are confined in the same spaces, which generally lack minimal conditions of hygiene - ventilation, water, electricity and other basic services. Sanitary facilities, when they do exist, are in very poor condition. The cells are infested with insects, parasites and rats. The vast majority of prisoners have not been sentenced, and there are long delays in court hearings.

E. Reinstatement of the "section chiefs"

55. As has been noted elsewhere, the section chiefs are the direct descendants of the landowners (encomenderos) of the time of the Spanish conquest and the inspectors of culture of the colonial epoch. The institution has persisted throughout the whole history of the Republic. The term "section chief" was coined during the United States occupation. The rural sectors are directly administered by the section chiefs, who are the sole representatives of the State in the countryside. They are responsible for maintaining order, supervising the markets, collecting taxes and settling problems of land allocation and ownership. In their "work" they are helped by one or more assistants and are directly answerable to the commander of the military district. Normally they abuse their powers and levy various exactions on the civilian population they are supposed to protect. They have their own police force. The posts of section chiefs or assistants are normally shared out among the friends and associates of the military commanders and even sold or exchanged for the promise of sharing in the money and goods which the chiefs receive from the peasants under their jurisdiction.

56. While President Aristide was in office, a decree was issued dismissing the section chiefs and replacing them by community policemen who were to be placed under the authority of the Ministry of Justice.

V. INTERNATIONAL PRESSURE AND NEGOTIATIONS TO RESOLVE THE POLITICAL CRISIS

A. Background

57. The political situation in Haiti since the coup d'état of 29 September 1991 has been marked by two closely linked yet contradictory phenomena. On the one hand, there has been intense international pressure for political negotiation with a view to re-establishing the constitutional Government; this pressure is without precedent in any of the numerous coups d'état that have occurred in Latin American countries. On the other hand, there is no tradition of consensus and political dialogue among the constituent sectors of Haitian society. Thus far, the first factor has prevented the definitive consolidation of the de facto Government which emerged from the military coup, compelling it to continue talks on a possible return to normality, while the second has made it extremely difficult to reach the necessary agreements, despite the many efforts and attempts made.

58. International pressure, both from OAS and from the United Nations and the European Economic Community (EEC), as well as from certain individual countries, does derive from the international commitment to democratic development, but is due chiefly to the fact that in this case the international community as a whole, and some individual countries, freely contributed, through their presence, influence and human and material resources on an unprecedented scale, to the organization of the electoral process which culminated in the election of Jean-Bertrand Aristide in December 1990. From the outset, doubts had persisted about Aristide's ideas and political orientation, as his campaign speeches promised "far-reaching" changes in Haitian society without specifying the nature or extent of those changes; nevertheless, the results of the elections (in which the people participated on a massive scale in a competitive and serious electoral process for the first time ever) gave rise to the conviction that, in order for Haiti's political development to begin, the international community must help the new Government consolidate itself, achieve stability and implement combined socio-economic and political-institutional development programmes. It was therefore decided that international observers should be sent during the elections, and that cooperation programmes, resource transfers, technical assistance, etc., would follow in 1991. That conviction also led to widespread interest in solving the problem that subsequently arose when constitutional order broke down after the coup d'état.

59. Although the democratic Government has yet to be restored and the negotiations thus far have run into many difficulties, the Special Rapporteur believes that the only way to restore the democratic process peacefully and, hence, to prevent further massive violations of human rights in Haiti is to return to a democratic system of government. This can only be achieved through political negotiation.

60. This section contains an analysis of the action taken, the international pressure exerted and the initiatives and negotiating processes attempted to date. The Special Rapporteur presents here a summary of the efforts made so as not only to provide information on what has occurred in this respect but also, and in particular, to show the lessons that can be drawn from these processes, with their possibilities and shortcomings, which may be useful for the continued efforts that must be made in the ongoing search for a negotiated solution.

61. On the basis of the principles laid down in its Charter, OAS, at the twenty-first session of its General Assembly, held at Santiago, Chile, in June 1991, adopted resolution AG/RES.1080 (XXI-O/91), entitled "Representative Democracy", in which it instructed the Secretary-General of that organization to call for the immediate convocation of a meeting of the Permanent Council in the event of any occurrences giving rise to the sudden or irregular interruption of the democratic political institutional process or of the legitimate exercise of power by the democratically elected Government in any of the organization's member States, in order, within the framework of the Charter, to examine the situation, decide on and convene an ad hoc meeting of the Ministers for Foreign Affairs, or a special session of the General Assembly, all of which must take place within a 10-day period.

62. On that basis, just one day after the coup d'état of 29 September 1991 which ousted President Jean-Bertrand Aristide, the OAS Permanent Council met at OAS headquarters in Washington and adopted resolution CP/RES.567 (870/91), entitled "Support to the democratic Government of Haiti". In it the Permanent Council condemned the coup d'état, reiterated the Santiago Commitment to Democracy and the Renewal of the Inter-American System, reaffirmed its solidarity with the Haitian people in their struggle to strengthen their democratic system, deplored the loss of human lives resulting from the coup d'état and demanded that those responsible for the violation of human rights should be punished. Finally, pursuant to resolution AG/RES.1080 (XXI-O/91), it decided that an ad hoc Meeting of Ministers for Foreign Affairs of American States should be convened in order to study the situation in Haiti and take the necessary decisions.

63. The Ad Hoc meeting of Ministers for Foreign Affairs of American States was held in Washington on 3 October 1991. The deposed President Aristide, who had travelled from Caracas for that express purpose, attended and made a statement. The Ministers resolved, inter alia, to reiterate their vigorous condemnation of the coup d'état in Haiti and to demand full restoration of the rule of law and the immediate reinstatement of President Aristide in the exercise of his authority; to recognize the representatives designated by the Government of President Aristide as the only legitimate representatives of the Government of Haiti to the organs, agencies and entities of the inter-American system; to recommend the diplomatic isolation of the de facto Government and the suspension of economic, financial and commercial ties with Haiti until the rule of law was restored; to urge the Inter-American Commission on Human Rights to take all measures within its competence to protect and defend human rights in Haiti; and to keep open the Ad Hoc Meeting of Ministers for Foreign

Affairs in order to take any additional measures that might be necessary to deal with the situation.

64. On 4 October 1991, an OAS delegation headed by Secretary-General João Clemente Baena Soares and consisting of six Ministers for Foreign Affairs of American States travelled to Port-au-Prince to initiate negotiations for the restoration of democracy. The OAS requirements were specific: the immediate return of President Aristide and his reinstatement as President of the Republic. In the interview which the OAS delegation held with General Raoul Cédras and other officers of the armed forces, equally specific views were expressed: the OAS delegation stipulated that if President Aristide did not return immediately, economic and political sanctions would be applied; the military, in turn, said that President Aristide's return would not be tolerated.

65. In response to the position taken by the Haitian military, a further Ad Hoc Meeting of Ministers for Foreign Affairs of American States was held in Washington on 8 October 1991 at which resolution MRE/RES.2/91, entitled "Support for democracy in Haiti", was adopted. The resolution expressed the Ministers' decision to maintain the measures adopted in its resolution of 3 October and not to recognize the de facto government as legitimate or accept its representation within the organization; it also urged the States members of OAS to freeze the assets of the Haitian State and to impose a trade embargo on Haiti, except for humanitarian aid. The Ministers also decided to establish a special civilian mission to seek ways of re-establishing and strengthening democratic institutions.

66. For its part, the United Nations General Assembly, considering the item at its forty-sixth session, adopted resolution 46/7, entitled "The situation of democracy and human rights in Haiti", on 11 October 1991. In that resolution the Assembly strongly condemned the attempted illegal replacement of the constitutional President of Haiti, the use of violence and military coercion and the violation of human rights in that country; affirmed as unacceptable any entity resulting from that illegal situation and demanded the immediate restoration of the legitimate Government and the full application of the National Constitution and thus the full observance of human rights in Haiti; requested the Secretary-General to provide the support sought by OAS in implementing its resolutions; appealed to the States Members of the United Nations to take measures in support of the OAS resolutions; emphasized that an increase in technical, economic and financial cooperation would be necessary when constitutional order was restored in Haiti; and decided to keep open the consideration of the item until a solution to the situation was found.

B. Early negotiations

67. Taking advantage of the easing of tensions generated by statements by the Prime Minister of the de facto Government, Jean-Jacques Honorat, who on 14 October 1991 had announced his "willingness to seek the best road to democracy", the OAS civilian mission arrived in Haiti on 9 November 1991 led

by the former Minister for Foreign Affairs of Colombia, Mr. Augusto Ramírez Ocampo, who had been appointed to head the mission by the Secretary-General of OAS. After several days of talks with various groups, including the military, Parliament and political parties, agreement was reached on 13 November to begin negotiations between representatives of the Haitian Parliament and of President Aristide with a view to resolving the political crisis.

68. Early talks preparatory to the negotiations took place at Cartagena de Indias, Colombia, from 21 to 23 November 1991. Participting were President Aristide and his advisers and delegations from both chambers of the Haitian Parliament, led by their respective Presidents, Senator Déjean Bélizaire and Deputy Duly Brutus. The talks centred on five issues: (a) the return to constitutional government, including, naturally, the reinstatement of President Aristide; (b) the election of a new Prime Minister, chosen by the President and Parliament in mutual agreement; (c) the lifting of the embargo and the resumption of international cooperation programmes; (d) the professionalization of the armed forces and the creation of a police force, separate from the army, under the authority of the Ministry of Justice; and (e) the resumption of the legislative programme for the development of the principles set out in the 1987 Constitution.

69. The talks at Cartagena took place in an atmosphere of great tension. Even though the parties agreed to an eventual return to constitutionality, the parliamentarians would not agree to the inclusion of President Aristide's name in the final communiqué. Aristide, in turn, accused the armed forces high command of human rights violations, charging them with the deaths of a large number of his supporters. One point on which no agreement was reached concerned the appointment of a new Prime Minister. While the parliamentarians maintained that Jean-Jacques Honorat should continue in his functions, President Aristide agreed to appoint a new Prime Minister, in accordance with constitutional procedures, but categorically rejected the candidacy of Honorat. Another point of disagreement concerned the embargo: President Aristide argued that the embargo should be maintained for as long as the military remained in power, while the parliamentarians contended that it was causing serious problems for the population and demanded its immediate lifting. Ultimately, this initial attempt at negotiation produced no positive practical results, even though it had the merit of bringing at least two of the parties to the conflict together at the same table for the first time since the coup d'état of 29 September 1991.

C. Further efforts at negotiation resulting in the signature of the Washington protocols

70. The OAS civilian mission undertook another visit to Haiti during the first two weeks of December 1991 with its main objective apparently being to achieve a consensus on the designation of a new Prime Minister. It was hoped in this way to resume the negotiating process which had been suspended since the Cartagena meeting. The negotiations revolved around the names of

Victor Benoît, Secretary-General of the Comité national du Congrès des mouvements démocratiques (Komité Nasyonal Kongré Mouvman Démokratik (KONAKOM)), who was supported at that time by President Aristide and by a sizeable group in Parliament; Marc Bazin, a former conservative presidential candidate and leader of the Mouvement pour l'instauration de la démocratie en Haiti (MIDH); and René Théodore, Secretary-General of the Haitian Communist Party (Parti unifié des communistes Haïtiens (PUCH)), now known as the Mouvement pour la reconstruction nationale. In late December 1991, it was publicly announced that Théodore had been accepted as a consensus candidate. The two main reasons for his emergence as such were that he had been opposed to Aristide while the latter had been in office and that he had not supported the coup d'état.

71. There was every indication that Théodore would be named Prime Minister as the first step towards a solution to the crisis. On 9 January 1992, the Secretary-General of OAS announced publicly that President Aristide had accepted the Théodore arrangement. However, a few days later new problems arose: the delegation of Haitian parliamentarians which was scheduled to travel to Washington to meet jointly with President Aristide, Théodore, the Secretary-General of OAS and the OAS civilian mission failed to turn up at the meeting. Also absent was Théodore, whose failure to attend was interpreted as a means of avoiding commitments that he would have been unable to honour as Prime Minister, particularly as regarded measures to address the responsibility of senior officers in the armed forces whom Aristide had accused of human rights violations. It was expected that final agreements would be concluded at the Washington meeting.

72. A few days later, on 25 January 1992, an assassination attempt was made against Théodore. The headquarters of Théodore's party, MNR, was attacked by a commando of armed men in civilian dress. One of his bodyguards was killed in the attack and the others were threatened and maltreated. The assault brought the negotiations under way to a halt. During that period, a number of other significant developments occurred: Marc Bazin declared that Théodore would not be acceptable, the Senate then refused to recognize Théodore as Prime Minister and, lastly, Senator Thomas Eddy Dupiton requested the Haitian Congress to suspend the negotiations with OAS on the grounds that more time was needed to create new conditions conducive to a resolution of the crisis.

73. Under the auspices of OAS, and in the face of mounting international pressure, the talks were resumed, resulting in the so-called "Washington protocols". On 23 and 25 February 1992, two agreements were signed: the protocol between President Jean-Bertrand Aristide and the parliamentary negotiating commission (appendix I to this report) and the protocol between René Théodore and President Aristide (appendix II), both seeking a definitive solution to the Haitian crisis. The first agreement was signed by Jean-Bertrand Aristide, in his capacity as President of the Republic of Haiti; by Déjean Bélizaire, President of the Senate and of the parliamentary negotiating commission; and by Alexandre Médard, President of the Chamber of Deputies and Vice-President of the parliamentary negotiating commission. The agreements were also signed by the following witnesses: (a) members of the

Haitian parliamentary delegation: Thomas Eddy Dupiton, Jean-Robert Martinez, Duly Brutus and Joseph Mambert; (b) the members of President Aristide's delegation: Evans Paul, Guy Alexander, Michael Gaillard, Patrick Elie, Jean Molière and Turneb Delpé; and (c) the OAS Unity for Democracy (OEA-DEMOC) delegation: Augusto Ramírez Ocampo, Enrique Peinado Barrios, Mario González Vargas, Edwin Carrington, John Biehl and Lawrence Harrison. The second agreement was concluded between Aristide and Théodore, under the auspices of the Secretary-General of OAS.

74. The protocols state that the signatory parties recognize and acknowledge the need for a negotiated solution to the Haitian crisis which will be viable and lasting only if the Constitution and national sovereignty are respected and if their purpose is national unity, the establishment and consolidation of democratic institutions and the implementation of measures to guarantee civil liberties, halt repression and prevent any attempts at revenge. To this end, the parties undertake to encourage, consolidate and respect the principle of the separation of powers, in accordance with the Constitution, and to guarantee civil liberties and facilitate the free functioning of political parties and civic organizations. The parties also recognize the need to: (a) reinstate President Jean-Bertrand Aristide in the exercise of his function as constitutional President of Haiti (without specifying the date of his physical return to the country) and to cooperate in forming a Government of national consensus, having as its "consensus" Prime Minister René Théodore, who agrees to appoint a cabinet in consultation with President Aristide; (b) draw up and pass the laws provided for in the Constitution, particularly those concerning territorial groups (which would abolish the traditional institution of section chiefs), the modernization and professionalization of the armed forces, the separation of the police and the armed forces; and the operation of the citizens' protection bureau; (c) proclaim a general amnesty to ensure that the armed forces and security forces could not be charged with or tried for events which occurred during and after the coup d'etat of 29 September 1991; and (d) to request OAS to provide the consensus Government with substantial assistance as a matter of urgency.

75. The Washington protocols or agreements were well received by the international community. The EEC Presidency, for example, expressed his satisfaction with the agreements on 25 February 1992, calling upon States members of the Community to cooperate in their full implementation. In the same statement, the EEC States reiterated their readiness to support all efforts that might lead to a solution to the Haitian crisis and reaffirmed their willingness to resume ties of cooperation with Haiti as soon as the rule of law was restored. Similar statements were made by OAS and by European and Latin American Governments.

76. The Washington protocols clearly represented an extraordinary and realistic negotiating effort. They addressed (and to an extent sought to resolve) the most pressing problems of the Haitian crisis: the legitimacy of President Aristide, the appointment of a consensus Government, the lifting of the embargo, respect for human rights, and an amnesty for those accused of the crimes occurring after the coup d'état. It should be noted that the

Washington protocols did not set a date for Aristide's actual return to the country to resume his functions as President, a question which is obviously extremely delicate in the context of the Haitian crisis. Paradoxically, while all the parties seemed to agree on the content of the protocols, none of them made any effort to implement them. It is significant that just three days after they were signed, President Aristide himself delivered an address to the Commission on Human Rights in Geneva, in which he did not even mention the protocols. In fact, in that address he broke one of the pledges he had made in the agreements, namely, to refrain from accusing the Haitian military. His address focused on the crimes committed against the Haitian people by the military command under General Raoul Cédras. This initial approach to the Washington protocols on the part of Aristide was later rectified when he adopted a more flexible position: he accepted the "national solution" on condition that the Constitution was respected; he agreed to drop René Préval as Prime Minister and to accept the formation of a Government of unity; and he condemned violence and called for a peaceful solution to the crisis.

77. It may be said, however, that the outcome of the protocols was always in doubt and clouded by the opposing political agendas of those who had signed them. In addition, there was one circumstance which seriously weakened them: the non-participation of both the military and the provisional Nérette-Honorat Government. It will be recalled that real power in Haiti lies in the hands of the armed forces, who, particularly since 29 September 1991, have taken all the important decisions and who also exercise a kind of veto power over what other groups in the country may propose or suggest. Officially, the armed forces had said that they would respect a negotiated solution agreed to by the civilian sectors; however, it is well known that in reality the military has the final word and that nothing will be done without its approval. For example, it is known that on 29 February 1992, General Cédras declared the strict neutrality of the armed forces vis-à-vis the Washington protocols, yet it was obvious to all that the army would oppose any investigation of the deaths and other human rights violations that occurred in Haiti during and after the coup d'état, and this has been one action that President Aristide has not been willing to forego.

78. The practical implementation of the protocols faced innumerable difficulties: the first was that the Parliament itself never ratified them. After two postponements, the vote scheduled for 18 March 1992 was blocked by Aristide's supporters. The chambers ended up voting by a margin of 47 to 34 to uphold the constitutionality of the agreements, but the opposition walked out, leaving less than the required quorum behind. Subsequently, by its judgement of 27 March 1992, the Supreme Court declared the agreements to be unconstitutional and without legal validity. In its decision, the Court ruled that Parliament was not competent to ratify the agreements and that Nérette should remain as Head of State. The de facto Government also rejected the content of the protocols. Later, by escalating their repression, the armed forces vitiated any remaining hopes of implementing them. Although the protocols may be considered the best draft agreement elaborated thus far, a return to their provisions seems unlikely. Since their abandonment, new negotiating processes have been tried.

D. The Villa d'Accueil tripartite agreement of 8 May 1992

79. With the Washington protocols thus a dead letter, the de facto Government in Haiti continued to try and weather the crisis while consolidating its political power. Just before the OAS General Assembly session in the Bahamas, at which the Ad Hoc Meeting of Ministers for Foreign Affairs was convened to review the situation and take decisions regarding the crisis in Haiti, a new round of negotiations was launched in Haiti which culminated in the so-called Villa d'Accueil tripartite agreement of 8 May 1992. Three parties took part in the negotiations: the de facto Government, represented by the de facto Prime Minister, Jean-Jacques Honorat; the Parliament, represented by Mr. Déjean Bélizaire, President of the Senate, and Mr. Alexandre Médard, President of the Chamber of Deputies; and, for the first time, the armed forces, represented by General Raoul Cédras himself, the Commander-in-Chief of the Haitian Armed Forces. This, then, marked the first time during the various negotiation efforts that Aristide and his supporters were excluded. Given the parties attending the meeting, it was a foregone conclusion that any decision would be endorsed by the Parliament and accepted by the armed forces.

80. As expected, the tripartite agreement definitively rejected the Washington protocols and refused to recognize Jean-Bertrand Aristide as the constitutional President. Objectives spelt out in the agreement included the formation of a Government "of consensus", the lifting of the embargo and the resumption of negotiations with OAS. This paved the way for Marc Bazin to assume the office of Prime Minister. It is significant that the tripartite agreement was reached only days before the opening of the OAS General Assembly session in the Bahamas, at which the American States were expected to ratify their decision to recognize no other Government in Haiti than the democratically elected Government having Jean-Bertrand Aristide as its President. The political manouevring was thus out in the open. The Haitian Parliament and armed forces blatantly rejected the solutions proposed thus far by OAS, making it clear that they would continue to participate in the negotiations only when they had secured a fait accompli: the appointment of a new Government without any consultation of Aristide. At this point changes began to be made. Nérette left the Government and Bazin was appointed Prime Minister, becoming the de facto Head of State as well.

81. With the installation of the second de facto Government in Haiti since the coup d'état of 29 September 1991, the situation, rather than becoming clearer, grew more complicated. In the international sphere, the Washington protocols were definitively rejected and OAS was challenged as a regional political body; at a critical juncture in its efforts, the organization was presented with a fait accompli that ran directly counter to the decisions and recommendations it had adopted since the onset of the crisis. The resolutions of the United Nations and the agreements of other international bodies were likewise rejected. At the domestic level, the key role of Aristide and his followers in the negotiations was completely discounted. Moreover, the Government formed by Bazin was more the product of political manouevring than of consensus. It is certain that Parliament support had been obtained by changing the rules regarding the formation of a quorum, thus leading to the

unexpected change in position of the Parti nationaliste progressiste révolutionnaire haïtien (PANPRA). For its part, the FNCD faction which had so far remained loyal to President Aristide was not present during the voting. Curiously, the manoeuvring which occurred in Parliament to ensure the adoption of the Villa d'Accueil tripartite agreement led to a resurgence of the political blocs which had coalesced and clashed during the December 1990 and January 1991 elections. The breaking of PANPRA with those groups that had supported the Washington protocols and its subsequent alliance with Bazin's MIDH and Déjean Bélizaire's MNP-28 re-established the old political bloc which had formed for the 1990 and 1991 elections and had since declined in strength from 67 per cent to 14 per cent. It should be recalled in any event that by this time the opposing parties had already made all the concessions they were willing to make, so that no agreement was reached - in fact, the situation had reverted to one of total polarization. Meanwhile, massive violations of human rights continued to take place and the embargo was bypassed, even though all programmes of international cooperation remained suspended.

E. The Florida Declaration

82. As the tripartite agreement meant the virtual breaking off of negotiations between the parties to the conflict, the emergence of a new negotiating process was crucial to President Aristide and his supporters. Various Latin American Heads of State sought to promote meetings between the parties. When this did not bring immediate results, President Aristide himself turned to the most relevant meeting to be held outside Haiti on the crisis since the coup of 29 September 1991. This meeting brought together 45 leaders who favoured the restoration of democracy in Haiti. After lengthy talks, the meeting produced a document entitled "For national unity: the Florida Declaration".

83. This document reiterated the principles uniting political circles with regard to the return to constitutional order in accordance with the election results, rejecting any proposal or "solution" that did not include Aristide's return to the office of President of the Republic. The document confirmed the need to achieve a negotiated solution and a Government based on a broader national consensus. The Secretary-General of the United Nations was requested to provide all support for the initiatives of the Ad Hoc Meeting of Ministers for Foreign Affairs of American States and the efforts of the Secretary-General of OAS to achieve a negotiated political solution to the crisis. The Declaration also requested the prompt dispatch to Haiti of an OAS Mission (OEA-DEMOC) to facilitate and promote the resumption of negotiations. The Declaration also sought full respect for civil and political rights and put forward a negotiating strategy and programme. A presidential negotiating commission was appointed for the purpose of reinitiating a dialogue among all groups as a basis for national understanding and support for OAS efforts. This document, which was fundamentally endorsed by President Aristide and Senator Wesner Emmanuel and Deputy Jean-Louis Fignolé, of the FNCD bloc, Evans Paul and Evans Picault of FNCD, Gesner Comeau and Jean Molière of the Mouvement d'organisation du pays (MOP), and Jean-Baptiste Chavannes and

Chery Irvelt of Lavalas, concluded as follows: "Yes to dialogue in Haiti, yes to dialogue with all sectors of Haitian society, for national unity."

F. Special mission by the Organization of American States to Haiti (18-21 August 1992) and resumption of negotiations

84. In the light of this new situation, the Secretary-General of OAS resumed his efforts and undertook new initiatives. An OAS mission, headed by the Secretary-General of that organization and comprising the Ambassadors of five Latin American countries, special high-level representatives from other member States, the President of the Inter-American Commission on Human Rights and representatives of the Caribbean Community (CARICOM), the United Nations and EEC, travelled to Haiti and remained in the country from 18 to 21 August 1992. The Special Rapporteur participated in the mission in his capacity as Chairman of the Inter-American Commission on Human Rights.

85. The main purpose of the mission was to find new forms of political negotiation that might lead to a solution of the crisis and a return to democracy. With this in mind, mission participants undertook a full programme of work and interviewed various groups within Haitian society, including senators and deputies from the National Assembly and representatives of churches and popular religions, human rights groups, the private sector, trade unions, the armed forces and the various political factions in the country. Following the mission, the Secretary-General of OAS announced that new opportunities and conditions had been identified for the resumption of a political dialogue. He then began at once, both in his personal capacity and through the civilian mission (OEA-DEMOC), to undertake the necessary preparations for the launching of a new dialogue between the parties to the conflict. To this end, President Jean-Bertrand Aristide and Prime Minister Marc Bazin were invited to appoint representatives to resume talks.

86. Talks between the representatives appointed by both parties began in Washington on 1 September 1992 under the auspices of the Secretary-General of OAS. President Aristide's representative was Father Antoine Adrien, head of the Presidential Negotiating Commission, and the representative of the de facto Prime Minister, Marc Bazin, was the Minister for Foreign Affairs of the de facto Government, Mr. François Benoît. The talks were held in the presence of the Secretary-General of OAS, in his office in Washington, and lasted for three days.

87. Although no official information on the talks has been released as yet, it is known that the following questions were among those discussed: the need to find formulas and launch measures to end the violence and human rights violations by both parties; mutual recognition of Aristide as President and of Bazin as Prime Minister; a general amnesty; the lifting of the embargo and the resumption of international cooperation programmes; and recognition of the

present Haitian Government by international organizations. One of the main points discussed during the negotiations was the sending of a permanent OAS civilian observer mission which would remain in Haiti until the political crisis is resolved. Although the representative of President Aristide felt that the civilian mission should include a large number of observers so that it could also monitor the situation in the interior of the country and in rural areas, the representative of the de facto Prime Minister maintained that it should be limited to a small number of observers. Finally, during the first week of September 1992, it was officially announced that OAS would dispatch a mission of 18 observers to Haiti for an indefinite period, for the purpose of "helping to secure a general reduction in violence and promote respect for human rights, cooperating in the distribution of humanitarian aid, and assessing the progress made towards a political solution of the crisis". When announcing the arrival of the OAS observer mission, the Minister for Foreign Affairs of the de facto Government, Mr. François Benoît, added that the holding of talks between Aristide and Bazin would be useful and that four countries had already offered to serve as the venue for any such meeting.

88. The Secretary-General of OAS announced that he would appoint the former Prime Minister of Jamaica, Mr. Michael Manley, to oversee and direct the civilian mission in Haiti, with a mandate to "facilitate" the process. The mission, consisting of specialists in various areas, began work in mid-September. Although the supporters of the de facto Government and those of President Aristide agreed to assist and cooperate with the OAS mission as far as possible, other political forces in Haiti were opposed to its presence. One of its foremost opponents was Mr. Leslie F. Manigat, who, it will be recalled, had been elected President in a questionable electoral process held at the beginning of 1988, after the military had prevented the holding of elections at the end of 1987 by the use of force. After assuming power with the help of the armed forces, Manigat was subsequently ousted when the military decided that he was not sufficiently submissive and obedient. Manigat has accused OAS of "intervening in the internal affairs of Haiti". Also opposed to the OAS presence is Mr. François Latortue, leader of a political party which obtained very little support in previous elections.

89. At the beginning of the forty-seventh session of the United Nations General Assembly, the Secretary-General rejected as invalid the credentials of the representatives sent by Mr. Bazin's de facto Government. That action was based on General Assembly resolution 46/7 of 11 October 1991, in which the Assembly affirmed as unacceptable any entity resulting from the illegal situation in Haiti. Other major international organizations have adopted similar positions.

VI. CONCLUSIONS

90. In its resolution 1992/77, the Commission on Human Rights requested the Special Rapporteur to prepare a report based on all information which he deemed relevant, especially that supplied by OAS, and to submit an interim report to the General Assembly at its forty-seventh session and a report to the Commission at its forty-ninth session.

91. It is well known that throughout 1992 Haiti was governed by de facto governments with a change of Government taking place in May. Until that time, the office of "President of the Republic" had been held by Mr. Nérette and the office of Prime Minister by Mr. Jean-Jacques Honorat. Since then, Mr. Marc Bazin has been Prime Minister and no one has been appointed to the office of President, which is at least a recognition that a real president exists, even though Aristide, the legitimate President, continues to live in exile.

92. Since the coup d'état of 29 September 1991, real power in Haiti has rested with the armed forces. Although the international community has made considerable efforts to achieve a political settlement to the crisis, the negotiations are doomed to failure unless their terms are endorsed by the military.

93. The de facto Government has been unable to consolidate its position primarily because of the intense international pressure brought to bear on it. Despite the efforts made, the negotiations have failed to resolve the political situation because, inter alia, (a) those with genuine power (the armed forces) have not been directly involved in the negotiations; (b) there is considerable resistance among many of those in authority to the recognition, return and restoration of Aristide as President; and (c) there has been an absence of genuine political will on the part of the various sectors involved to achieve a negotiated settlement of the crisis.

94. The human rights situation in Haiti has deteriorated appreciably during 1992, which has seen deaths, disappearances and murders, preventive repression, persecution, arbitrary detention, torture, the extortion of protection money from citizens by security forces, the dropping of legislative programmes, the re-emergence of the section chiefs, the banning of demonstrations, and police repression of all anti-government protest. The Special Rapporteur, the Inter-American Commission on Human Rights and other intergovernmental organizations have received countless individual complaints. The non-governmental organizations whose researchers visited Haiti during the year recorded a substantial increase in violations of the human rights enshrined in the International Covenant on Civil and Political Rights, the American Convention on Human Rights and other international human rights instruments.

95. The presence of permanent OAS observers could be a useful way of preventing or reducing human rights violations until political agreements can be concluded. The supervision and monitoring undertaken in the country by the OAS mission will act as deterrents to repression.

96. In Haiti there is virtually no rule of law. Life, integrity of the person and individual freedom are at the mercy of the security units making up the armed forces, the police, the "Tontons Macoutes" and the section chiefs. The Constitution is not in force, while criminal and civil laws are outdated and their provisions are not enforced. Citizens are defenceless in the face of arbitrary action by State agents.

97. The situation of the boat people is a particularly sensitive and important human rights question. While it is true that the grave deterioration in economic and social conditions has obliged many to seek refuge in other countries, it is also true that the phenomenon is at least partly due to indiscriminate political persecution and repression directed against the supporters of President Aristide, who for the most part live in the poor quarters of the cities or in rural areas where they are victims of the section chiefs and the "Tontons Macoutes".

98. The extensive human rights violations in Haiti can be decreased only through a return to a democratic political system, hence the importance of the efforts to conclude agreements between the various parties to the conflict. However, this would be little more than a first step. Haiti must then be helped to develop basic human rights institutions, professionalize its armed forces and separate them from the police, secure the independence of the judiciary, revise criminal, civilian and procedural laws, establish a precise definition of property, particularly in rural areas, modernize the prison system and bring it under the control of the Ministry of Justice, eliminate the section chiefs, punish those responsible for human rights violations, and ensure genuine separation of State powers as well as cooperation between them, in accordance with their respective terms of reference. Once legitimacy and democracy have been restored to Haiti, the international community must cooperate with the Haitian State in order to bring about the desired institutional progress.

VII. RECOMMENDATIONS

99. The Special Rapporteur wishes to make the following recommendations:

(a) The Commission on Human Rights should expresss its deep concern at the widespread violence perpetrated in particular by agents of the de facto Government and should condemn the systematic violations of human rights and fundamental freedoms which have become increasingly prevalent in Haiti, especially since the coup d'état of 29 September 1991;

(b) The Commission should continue to monitor the human rights situation in Haiti in order to identify, record and denounce violations, to demand that the Haitian State comply with its international and legal obligations, to help solve the serious problems facing the Haitian people in this area, and to alert Governments, the various United Nations bodies and world public opinion to the serious human rights situation in the country;

(c) The Commission should inform the de facto Government of Haiti that the fact that it has not been recognized by the international community does not exempt the State from its obligations to the Haitian people and to the international community to comply with the provisions of the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the International Covenant on Civil and Political Rights and the American Convention on Human Rights, all instruments to which Haiti is a State party;

(d) The Commission should inform the de facto authorities of Haiti that the persistent and systematic violation of human rights, particularly by government agents, represents a breach of the principles clearly set out and enshrined in the Charter of the United Nations, the Charter of the Organization of American States and in the various declarations and other international instruments which Haiti is required strictly to observe;

(e) The Commission should express its concern at the fate of the thousands of Haitians who have been or are being sent back to the country after attempting to flee abroad by any means available, especially in dangerous and fragile vessels. In this connection, it should be kept informed by the Office of the United Nations High Commissioner for Refugees and other reliable sources, and request international cooperation; it should appeal to the States Members of the United Nations to apply the prevailing norms of humanitarian law in this case and demand that the de facto Government of Haiti respect human rights in general and, in particular, the life and physical integrity of Haitians who have been forced to return to their country;

(f) The Commission should express particular satisfaction at the cooperation established between the organizations of the United Nations and those of the inter-American system with a view to promoting a solution to the political crisis in Haiti, restoring normal democratic rule and creating a climate in which human rights can be respected and upheld;

(g) The Commission should recognize the vigorous efforts undertaken by the inter-American system to resolve the political crisis in Haiti and should request the Secretary-General of the United Nations to continue cooperating with the other bodies of the system and especially with OAS until a final solution of the problem is achieved;

(h) In considering future action in this field, the Commission should bear in mind that the settlement of the political crisis in Haiti is only a point of departure for a process which should also involve the structural changes needed to ensure respect for human rights in the country, including in particular measures to improve the administration of justice and the prison system, modernize civil and criminal legislation, separate the police from the armed forces, eliminate the old system of section chiefs, resolve the problem of land ownership, ensure genuine separation of the powers of State and mutual respect for their respective prerogatives, and launch social and economic programmes to improve the deplorable living conditions of the vast majority of the population. In order to bring about these changes, vigorous programmes of international, multilateral and bilateral cooperation will be needed;

(i) In view of the serious and very difficult human rights situation in Haiti, the Commission should maintain its decision to appoint a Special Rapporteur to continue studying and reporting periodically to the Commission and the United Nations General Assembly on the situation of human rights in Haiti under the item entitled "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories";

(j) When national and international circumstances so permit, the Secretary-General of the United Nations should send to Haiti one or more human rights specialists to be permanently based at the office of the United Nations Development Programme at Port-au-Prince in order to monitor the human rights situation in Haiti in collaboration with the Centre for Human Rights, the OAS mission there and the Special Rapporteur, to encourage the teaching and promotion of human rights, and to advise the authorities on measures to strengthen public and private institutions for the protection of human rights in Haiti.

100. These are the recommendations which the Special Rapporteur is submitting under the mandate entrusted to him by the Commission, after having visited the country, collected and analysed information and acquired first-hand knowledge of the human rights situation in Haiti in 1992. The Special Rapporteur believes that the political, economic and social situation of the country should continue to be closely monitored and is convinced that it is only by resolving the institutional crisis and ensuring persistent international vigilance that conditions can be created to guarantee respect for the human rights of the Haitian people.

APPENDIX I

Protocol between President Jean-Bertrand Aristide and the parliamentary negotiating commmission to find a definitive solution to the Haitian crisis

Article I

The signatory parties to this protocol recognize and acknowledge the principle of the urgent necessity for a concerted and negotiated solution to the political and institutional crisis which Haitian society has been experiencing since President Jean-Bertrand Aristide went into exile on 30 September 1991, and that this solution, in order to be viable and lasting, must be sought within the context of respect for the Haitian Constitution and for national sovereignty and must lead to:

National concord;

The establishment and consolidation of democratic institutions;

The implementation of measures to guarantee civil liberties, halt repression and prevent any attempts at revenge or settling of accounts.

Article II

With all these aims in view the signatory parties undertake to:

1. Encourage, consolidate and respect the principle of the separation of powers in accordance with the Constitution and, within that context, to work to set in place mechanisms for harmonization and collaboration so as to facilitate the establishment of the institutions provided for in the basic Charter;

2. Guarantee civil liberties and facilitate the free functioning of political parties and civic organizations in respect for the Constitution and the laws governing said organizations.

Article III

The Parties recognize the necessity for the Haitian Parliament, which is the co-depositary of national sovereignty, to:

1. Reinstate Jean-Bertrand Aristide in the exercise of his function as the constitutionally-elected President of the Republic of Haiti and undertake to assist the Government of national consensus to bring about the conditions for the return of Jean-Bertrand Aristide to Haiti;

2. Draw up and pass laws to set in place the institutions provided for in the Constitution, inter alia:

(a) The Act concerning territorial groups;

(b) The Act concerning separation of the police and the armed forces;

(c) The Act concerning operation of the citizens' protection bureau;

3. To facilitate, by laws and regulations, implementation of a policy of social peace and economic revival.

Article IV

The Parties recognize the necessity for President Jean-Bertrand Aristide to:

1. Respect the decisions taken and acts ratified by the Haitian Parliament. In the event of a disagreement between the executive and the legislature, it shall be possible for either party to refer to the Conciliation Commission, in accordance with article 111-5 of the Constitution;

2. Agree that, during his absence, the Prime Minister shall take over management of the affairs of State, in accordance with article 148 of the Constitution.

Article V

The Parties recognize the need to:

1. Proclaim a general amnesty, save for common criminals;

2. Refrain from any ambiguous statement which could be interpreted as an incitement to violence;

3. Accept the new consensus Prime Minister chosen by President Jean-Bertrand Aristide in consultation with the President of the Senate and President of the Chamber of Deputies;

4. Request the lifting of the embargo and the sanctions provided for in chapter I, paragraph 4, of resolution MRE-2/91 of the Organization of American States, immediately after confirmation of the Prime Minister and installation of the Government of national consensus;

5. Recognize their obligation to undertake all necessary measures with a view to putting national institutions in a context that will enable them to take all decisions within their competence, in complete freedom, without having to suffer violent intervention, threats of violence from any force whatever;

6. Recommend to Parliament that it should, as a matter of urgency, approve the request of President Jean-Bertrand Aristide to OAS to send the civilian OEA-DEMOC mission to Haiti;

7. Request the Organization of American States and the international community to provide the Government of national consensus with substantial assistance as a matter of urgency so as to revitalize the Haitian economy, promote social well-being, professionalize the armed forces and the police and strengthen the democratic institutions;

8. Reject and condemn any intervention by foreign armed forces in the settlement of Haitian affairs.

DONE in good faith, in triplicate, at Washington, D.C., on 23 February 1992.

This protocol of agreement shall enter into force immediately after ratification by the National Assembly at the convocation of its President.

(Signed) Jean-Bertrand ARISTIDE
President of the Republic of Haiti

(Signed) Déjean BELIZAIRE
President of the Senate and of the
parliamentary negotiating commission

(Signed) Alexandre MEDARD
President of the Chamber of Deputies
and Vice-President of the
parliamentary negotiating commission

APPENDIX II

Protocol of agreement between President Jean-Bertrand Aristide and Prime Minister-Designate René Théodore under the auspices of the Organization of American States (OAS)

In order to establish a climate of confidence, restore the democratic order, stimulate the national economy, consolidate the institutions and facilitate the return to power of President Jean-Bertrand Aristide:

1. The undersigned parties recognize, in setting in motion the restoration of the constitutional order in Haiti, the importance of resolutions MRE/RES.1/91 and MRE/RES.2/91 of the Ad Hoc Meeting of Ministers for Foreign Affairs of member countries of the Organization of American States and resolution CP/RES.567 (870/91) of the Permanent Council of the Organization.

2. They recognize, in setting in motion the restoration of the constitutional order in Haiti, the importance of the "protocol between President Jean-Bertrand Aristide and the parliamentary negotiating commission to find a definitive solution to the Haitian crisis".

3. They recognize also that President Jean-Bertrand Aristide enjoys fully and completely his constitutional prerogatives as Head of State.

4. The parties pledge to take all necessary measures to guarantee public liberties and to halt all repression and reprisals. To that end, they recognize the necessity for the deployment, as quickly as possible, of the civilian OEA-DEMOC mission and of representatives of the Inter-American Commission on Human Rights. They urge international organizations, in particular the United Nations, the organizations for the defence of human rights and the international press to spare no effort in their contributions to that endeavour.

5. The parties recognize the need to form a Government of national unity, whose programme will be drawn up - with the political parties represented in Parliament and which support this Government - by the Prime Minister together with the President.

6. In order not only to respect the vote of 16 December 1990 and the mandate relating thereto but also to guarantee the Prime Minister's responsibility for forming the government team, the parties agree that the President and the Prime Minister shall proceed, in agreement, to choose the persons to fill the ministerial posts.

7. The parties recognize the need, once he has been confirmed, for the Prime Minister to work to create the conditions for the return of President Jean-Bertrand Aristide. In the meanwhile, the Prime Minister undertakes to meet the President of the Republic, as far as possible every two weeks, to evaluate the functioning of the Government and the conditions of

return. For this meeting, they shall request a report from the Secretary-General of the Organization of American States to enable them to evaluate the assistance of that institution with regard to the progress of the return process. One month after ratification, the President of the Republic, the Prime Minister and the Secretary-General shall meet to determine the modalities of the return of the President of the Republic.

8. The President undertakes to provide the Prime Minister with all necessary collaboration and political support for the accomplishment of his task in accordance with the provisions of the Constitution.

9. The parties recognize the need to request the lifting of the embargo and other sanctions contained in chapter I, paragraph 4, of resolution MRE/RES.2/91 of the Ad Hoc Meeting of Ministers for Foreign Affairs of member countries of the Organization of American States, at the official request of President Jean-Bertrand Aristide, once the Prime Minister has been confirmed and the Government installed.

10. The parties undertake to give particular attention to the military with a view to professionalizing it and establishing better conditions, materially and as regards morale, that should enable it to participate in the democratic process and carry out its constitutional task.

11. The parties recognize the need to approach member countries of the Organization of American States and the United Nations, international organizations and the international community in general in order to obtain emergency assistance for the reconstruction of Haiti's economy and the technical and financial means required to strengthen its institutions.

Done in good faith in triplicate at Washington, D.C., on 25 February 1992.

(Signed) Jean-Bertrand ARISTIDE
President of the Republic of Haiti

(Signed) René THEODORE
Prime Minister-Designate

Signed under the auspices of the Organization of American States,

(Signed) João Baena Soares
Secretary-General